



De minimis & Direct Product Rules

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De minimis and Direct Product

- These rules exist to determine if a non-U.S.-made item is ...

“Subject to the EAR”





De minimis and Direct Product

- These rules should only be applied to non-U.S. made items...

Outside the United States





De minimis

- U.S. controlled content, Incorporation and subject to the EAR
- *De minimis* rules
 - Ineligible for *de minimis*
 - “600 series”/9x515/see-through carve out items
 - Non-“600 series”/9x515/see-through carve out
- Sample Calculations of *de minimis*
- Second Incorporation Rule
 - Discrete Product



De minimis

- International Traffic in Arms Regulations (ITAR) have a “see through” rule.

- more sensitive military exports

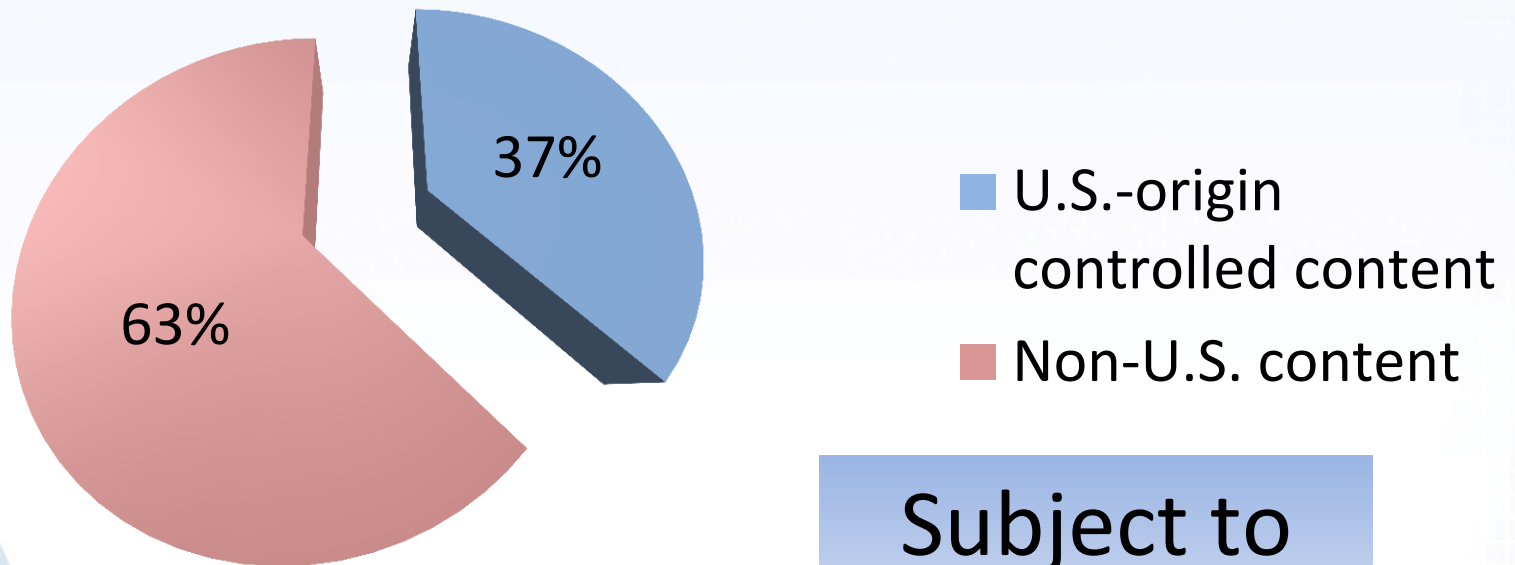


- Export Administration Regulations (EAR) have *de minimis* rules
 - based on the percentage by value of U.S.-origin **controlled content** in a non-U.S.-made item.
 - No “see through” rule



A non-U.S. made item that **incorporates** controlled U.S.-origin content that exceeds the ***de minimis* percentage** is subject to the EAR.

Above the *De minimis* %

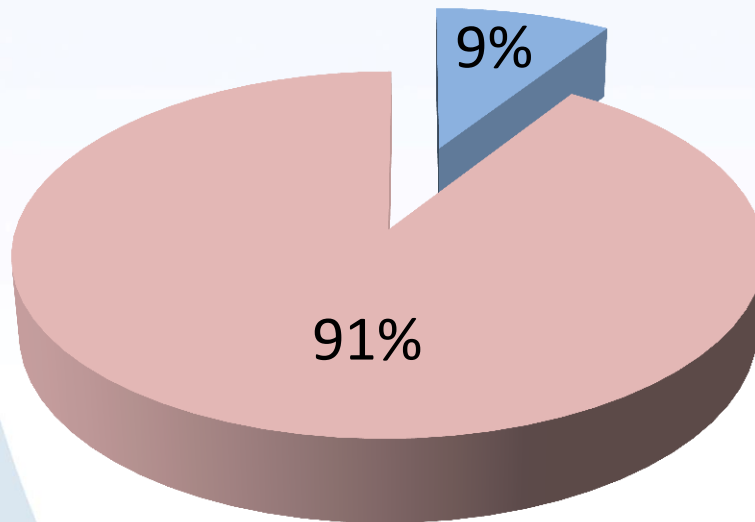


Subject to
the EAR



A non-U.S. made item that **incorporates** controlled U.S.-origin content that does not exceed the ***de minimis* percentage** is not subject to the EAR.

Below the *De minimis* %



- U.S.-origin controlled content
- Non-U.S. content

Not Subject to the EAR






Incorporation

- Supplement No. 2 to part 734, Note to paragraph (a)(1)
- U.S. items are “incorporated” when they are:
 - Essential to the functioning of the non-U.S. equipment;
 - Customarily included in the sale of non-U.S.-made items; and
 - Reexported with the non-U.S.-made items.





“Controlled content” for *de minimis* purposes

- **Controlled content** = U.S.-origin items that require a license to the ultimate destination of the non-U.S.-made item
 - In general, EAR99 items are not controlled content except to certain destinations
 - When calculating controlled content for de minimis purposes, DO NOT count:
 - Commodities eligible for License Exception GBS
 - Items eligible for NLR (no license required)
 - Commodities controlled for Short Supply reasons

Supp. No. 2 to part 734, paragraph (a)(1)



ITAR content in non-U.S. made Items

- Regardless of whether the non-U.S.-made item is military or commercial, the ITAR's see-through rule will generally apply.
- Certain exceptions apply for when a *See-through-carve-out Note* exists:
 - *“The articles described in this paragraph are subject to the EAR when, prior to export, reexport, retransfer, or temporary import, they are integrated into and included as an integral part of an item subject to the EAR.”*



ITAR content in non-US made Items (cont.)

- See through carve-out Note references:
 - USML Category VIII(h)(2)-(5), (7), (13), (14), (17)-(19), and (21)-(26) when incorporated into a 9A610 military aircraft
 - USML Category XV(c)(3) and (e) when incorporated into an item subject to the EAR
- ITAR controlled items carved out of the ITAR
 - “Controlled content” for purposes of *de minimis* calculations.
 - Referred as ***See-through carve-out items***



Satellite Considerations:

US content calculation

- In ITAR Cat XV, See-through carve-out Note references:
 - Paragraph (c)(3)
 - Paragraph (e)
- Therefore, if the ITAR content is Cat XV (c)(3) or (e) **and** incorporated into a ECCN 9A515 satellite or system, then the ITAR content is “subject to the EAR” and must be counted as US controlled content for *de minimis* purposes.



Satellite Considerations:

Jurisdiction & licensing

- If the 9A515 satellite, foreign or domestic, contains a Cat XV item other than (c)(3) or (e), then the ITAR item remains ITAR and would require export or retransfer authorization from DDTC.
 - The satellite remains subject to the EAR
 - Only the ITAR part requires DDTC authorization,
 - List the satellite as a paragraph (x) item on the ITAR application.



Satellite Considerations:

U.S. controlled content destination

- “Spacecraft” have two potential countries of ultimate destination,
 - the country where a space launch occurs and
 - the country that will have control over the “spacecraft” after launch.
- The 0% *de minimis* threshold for D:5 countries applies to both the country of launch and the country of control.





De minimis Rules

- 0%: § 734.4(a)
 - Often applies to specific U.S. content destined for certain destinations
 - Some restrictions apply to all destinations
- 10%: § 734.4(c)
- 25%: § 734.4(d)
- Additional steps for certain encryption items described in § 734.4(b)
- Calculation guidance: Supp. No. 2 to part 734





Ineligible for *De minimis* or 0%

- Certain ECCN 9E003 technology
- Certain components of high performance computers destined to certain countries
- ECCN 5E002 technology and certain encryption commodities and software
- QRS11 sensor in commercial standby instrument or flight control system, or aircraft with such a system
- ECCN 6A003.b.4.b cameras when incorporated into a non-U.S. origin military commodity





Country Groups D and E

- D:1 Countries of National Security Concern
- D:2 Countries of Nuclear Concern
- D:3 Countries of CBW Concern
- D:4 Missile Tech.
- D:5 U.S. Arms Embargo Countries
- E:1 Terrorist Supporting Countries
- E:2 Unilateral Embargo



De minimis for “600 series,” 9x515 and see-through carve out items

The “600 series” and 9x515 *de minimis* rule – items identified in .a through .x paragraphs of the ECCN, as well as *see-through carve-out items*

Item with U.S. content reexported to all countries, except D:5 (see also ITAR §126.1), E:1 and E:2

25% *de minimis* rule

D:5 (U.S. arms embargoed), E:1 and E:2

0% *de minimis* rule

Note 1: See Supplement No. 2 to Part 734 – Guidelines for De minimis Rules

Note 2: If exceeds de minimis, the foreign made item is subject to the EAR.



De minimis for “600 series” .y

The “600 series” *de minimis* rule – items identified in .y paragraph of “600 series” ECCN

Item with U.S. .y content only reexported to all countries, <u>except</u> E:1, E:2 plus China	Not subject to the EAR
E:1, E:2 plus China	0% <i>de minimis</i> rule

Note 1: See Supplement No. 2 to Part 734 – Guidelines for De minimis Rules

Note 2: If exceeds de minimis, the foreign made item is subject to the EAR.



De minimis for Non- “600 series”/9x515/see-through carve-out

The *de minimis* rule for all other items subject to the EAR, *i.e.*, non-“600 series,” ECCN 9x515, see-through carve-out items

U.S.-origin controlled content reexported to all countries, <u>except</u> Country Group E:1	25% <i>de minimis</i> rule
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Country Group E:1	10% <i>de minimis</i> rule
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Note 1: See Supplement No. 2 to Part 734 – Guidelines for De minimis Rules
Note 2: If exceeds de minimis, the foreign made item is subject to the EAR.



De minimis Calculation



- Performing *de minimis* calculation:

$$\frac{\text{(Fair Market Value of U.S.-origin controlled content)}}{\text{(Fair market dollar value of non-US-made product)}} \times 100$$

- Compare commodity/commodity, software/software, technology/technology
 - For commodities, calculation can also include “bundled” software
- Consult Supp. No. 2 to part 734 for additional guidance



Bundling software with commodities

- U.S.-origin software may be “bundled” with non-U.S.-made commodities and included in de minimis calculations
 - Eligible software is configured for a specific commodity, but is not necessarily physically integrated into the commodity
 - Eligible software is controlled for AT reasons only or is EAR99
- Notes to paragraphs (c)(1) and (d)(1)



Calculation example



- U.S.-origin field programmable gate array (FPGA) integrated circuit ECCN 3A001.a.7 \$600.00.



- Used for beam forming in processing equipment specially designed for German Trout acoustic towed hydrophone array \$6,000.00



Calculation example



U.S.-origin FPGA \$600

German hydrophone \$6000

De minimis Percentage = $.1 \times 100 = 10 \%$





Fair Market Value Considerations

- What if a buyer of the FPGA is a subsidiary or a regular customer and the price is reduced by 50% to \$300?
 - You must use the Fair Market value of the FPGA \$600
- What if there is a regional price for the FPGA of \$500 to Australia?
 - You may use the regional price of \$500.
- What if the hydrophone has never been sold and has no FMV?
 - Use comparable FMV for a similar product or you can use the production cost of the item.



De minimis Analysis

- What if a hydrophone cost \$2,000, what would be the calculated *de minimis* percentage of U.S. controlled content if the hydrophone were destined to Australia?
 - No U.S. controlled content, because the FPGA is eligible for LE GBS to Australia.
- What if hydrophone cost \$2,400, what would be the calculated *de minimis* percentage if it were destined for Russia?
 - $(\$600/\$2,400) \times 100 = 25\%$
- Is it subject to the EAR?
 - No, to be subject to the EAR, must be ABOVE the 25% *de minimis* level when hydrophone is destined to *Russia*.



Second Incorporation Rule

- Policy determination of BIS
- Cannot be applied to “600 series” U.S.-origin content or U.S.-origin see-through carve-out items.
- Can only be applied if the first incorporation results in a non-U.S.- made **discrete product**





Discrete Product

- The first incorporation must be complete and result in a discrete product.
- The U.S.-origin content in the **first** discrete product must be counted in a *de minimis* calculation until that product's **second** incorporation is complete.





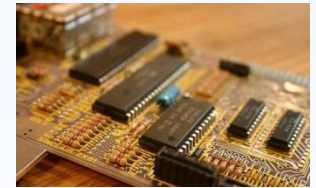
Discrete Product

- Evidence of a discrete product
 - The Non-U.S. product is regularly sold as stand alone product or as an identifiable replacement component or assembly.
- Evidence that the non-U.S.-made product is not a discrete product
 - Purchaser is involved in the design of the non-U.S.-made product



Second Incorporation Rule Example

- U.S.-origin microprocessor chip (3A001.a.3)
- Chip is incorporated into a non-U.S.-made Central Processing Unit (CPU) card (4A003.c) and is subject to the EAR because of the *de minimis* rule.
- The CPU is sold from stock outside the U.S.
- The non-U.S.-made CPU is incorporated into a non-U.S.-made computer (4A003), which is not subject to the EAR because of the 2nd incorporation rule.





Direct Product Rules

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Senior Export Policy Analyst





Direct Product

- Direct product rules
 - “600 series”
 - ECCN 9x515
 - Non-“600 series”/non-9x515/non-0A919
- Classifying the Non-U.S.-Made Items Subject to the EAR
- ECCN 0A919





Direct Products of U.S. Technology or Software

- **Under the ITAR (§124.8(5)),** any defense article produced or manufactured from ITAR technical data or defense service requires DDTC approval prior to transfer to any non-U.S. person.
- **Under the EAR,** certain non-U.S.-made items, located outside the U.S., that are the direct product of certain U.S. controlled technology or software are subject to the EAR when exported from abroad or reexported to *certain* countries.



“600 series” Direct Product Rule

The “600 series” direct product rule

Is the non-U.S.-made direct product of:

Yes

(i) U.S. controlled “600 series” technology or software or

(ii) A plant or major component of a plant that is a direct product of U.S. controlled “600 series” technology or software?

Is the non-U.S.-made direct product a “600 series” or 0A919 item?

Yes

Is the “600 series” or 0A919 non-U.S.-made direct product being reexported or exported from abroad to a destination listed in **Country Group D:1, D:3, D:4, D:5, E:1 or E:2**?

Yes

Note: If “yes” to all three questions, then the non-U.S.-made item is subject to the EAR.





9x515 Direct Product Rule

The 9x515 direct product rule

Is the non-U.S.-made direct product of:

(i) U.S. controlled 9x515 technology or software or

(ii) A plant or major component of a plant that is a direct product of U.S. controlled 9x515 technology or software?

Yes

Is the non-U.S.-made direct product a 9x515 item?

Yes

Is the 9x515 non-U.S.-made direct product being reexported or exported from abroad to a destination in **Country Group D:5, E:1 or E:2**?

Yes

Note: If “yes” to all three questions, then the non-U.S.-made item is subject to the EAR.



The NON-(“600 series,” 0A919 & 9x515) direct product rule

Is the non-U.S.-made direct product of:

- (i) U.S. controlled technology or software that requires a written assurance as a supporting document for a license, see Supp No. 2 to 748 (o)(3)(i), or as a precondition for the use of LE TSR § 740.6 or
- (ii) A plant or major component of a plant that is a direct product of U.S. controlled technology or software that meets the criterion in (i)?

Yes

Is National Security (NS) listed under the reason for control paragraph of the ECCN for the non-U.S.-made direct product?


Yes

Is the non-U.S.-made direct product being reexported or exported from abroad to a destination listed in **Country Group D:1, E:1 or E:2**?

Yes

Note: If “yes” to all three questions, then the non-U.S.-made item is subject to the EAR.





Determining Classification of Non-U.S.-Made Items Subject to the EAR

- When exporting from abroad non-U.S.-made items that are subject to the EAR under *de minimis* or the direct product rules ...

Determine the license requirements for the non-U.S.-made item

- **Note:** *When a non-U.S.-made item contains an ITAR item, only the ITAR item is subject to ITAR controls.*





ECCN 0A919

- Non-U.S.-made ‘military commodities’ located outside the United States that are not subject to the ITAR, AND having one or more of the following:
 - Incorporating cameras controlled under 6A003.b.3, .b.4.b, or .b.4.c.
 - Incorporating more than the *de minimis* amount of “600 series” content
 - Are direct products of U.S.-origin “600 series” technology or software





Contact

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Scenario #1

Direct Product “600 series”

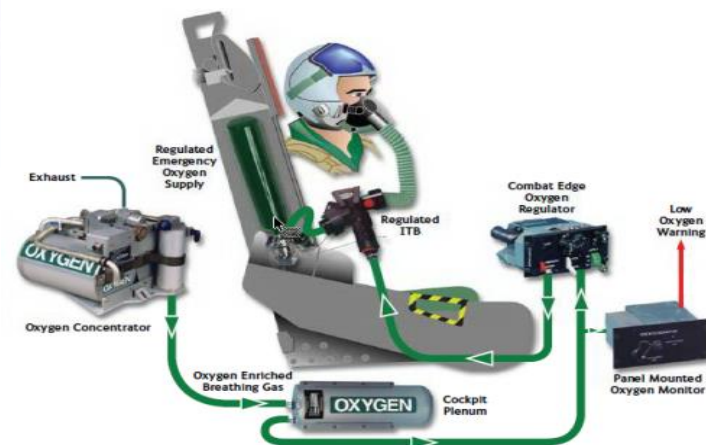
- **U.S. company** exports technology for the production of a *military aircraft emergency oxygen system (EOS)* (ECCN 9E610.a).
- **U.S. company** sells the technology to the **Israeli Ministry of Defense** and exports it using a BIS license.
- The Israeli MoD produces the **military aircraft emergency oxygen system (EOS) (ECCN 9A610)** (*Fair Market Value \$300*) in Israel using all Israeli parts, except for:
 - a ***U.S. high/low pressure valve*** specially designed for the system (FMV \$60 each)(ECCN 9A610.x).



Scenario #1

Direct Product “600 series”

- Israeli MoD makes a sale of their system to **Jordan MoD**.
- Is the Israeli aircraft on-board oxygen generating system subject to the Export Administration Regulations (EAR)?



Decision Tool Analysis – Scenario #1

- **Question 1:** Is the non-U.S.-made item produced from U.S. "600 series" or 9x515 technology or software, OR from a non-U.S.-made manufacturing plant or major plant component (made from U.S. 600 series or 9x515 technology)?

Answer 1: Yes

The Israeli military aircraft emergency oxygen system (EOS) was produced from the U.S. exported technology (**ECCN 9E610.a**) for the production of an EOS (which, if made in the US, would be classified under ECCN 9A610.a).



Decision Tool Analysis – Scenario #1

- **Question 2:** Are either of the following true (if it were classified using the U.S. Export Administration Regulations, Commerce Control List)?
 - The non-U.S.-made direct product is classified under a “600 series” ECCN and is destined to a country listed in Country Group D:1, D:3, D:4, D:5, E:1 or E:2.
 - OR
 - The non-U.S.-made direct product is classified under a 9x515 ECCN and is destined to a country listed in Country Group D:5, E:1 or E:2.



Decision Tool Analysis – Scenario #1

Answer 2: Yes, the Israeli produced *military aircraft emergency oxygen system (EOS)* would be classified under 9A610.a of the U.S. Export Administration Regulations, Commerce Control List, AND it is destined to Jordan, which is listed in Country Groups D:3 and D:4 ...



Decision Tool Conclusion – Scenario #1

- **Conclusion:** Non-U.S-made item is subject to the EAR and may require a license prior to export from abroad or reexport, see EAR to determine license requirements of the non-U.S-made item.
- **Click “Next”** - Thank you for using the BIS Interactive Tool. Please feel free to contact us if you have any further questions.
- **Click “Summary”** – it gives you a summary of all the questions, your response and the conclusion of your session. In the upper right corner of the page, you have the option to print this page or reset to go the beginning.



Decision Tool Session Summary

Session Summary

De minimis & Direct Product Rules Decision Tool

Overview The U.S. Department of Commerce, Bureau of Industry and Security (BIS) offers the following tool to help determine if a non-U.S.-made item located outside the United States is subject to the Export Administration Regulations (EAR). This tool is purely voluntary and serves as a checklist to identify and verify the key eligibility and compliance requirements of the direct product rules and the de minimis rules. If the non-U.S.-made item is inside the United States, this tool is not for you. Non-U.S.-made items that are in the United States are subject to the EAR pursuant to §734.3(a)(1) of the EAR,...

Q Is the non-U.S.-made item produced from U.S. 600 series or 9x515 technology or software, OR from a non-U.S.-made manufacturing plant or major plant component (made from U.S. 600 series or 9x515 technology)?

A Yes

① "600 series": ECCNs in the "xy6zz" format on the Commerce Control List (CCL) that control items on the CCL that were previously controlled on the U.S. Munitions List or that are covered by the Wassenaar Arrangement Munitions List (WAML). The "6" indicates the entry is a munitions entry on the CCL. The "x" represents the CCL category and "y" the CCL product group. The "600 series" constitutes the munitions ECCNs within the larger CCL.

① 9x515: one of the following ECCNs on the Commerce Control List (CCL): 9A515, 9B515, 9C515, 9D515 or 9E515, which are spacecraft and related items that the President has determined no longer warrant control under United States Munitions List (USML) Category XV—spacecraft and related items.

Are either of the following true?

Q The non-U.S.-made direct product is classified under a "600 series" ECCN and is destined to a country listed in Country Group D:1, D:3, D:4, D:5, E:1 or E:2.
Or
The non-U.S.-made direct product is classified under a 9x515 ECCN and is the destined to a country listed in Country Group D:5, E:1 or E:2.

A Yes

Q Country Group D:1 D:3, D:4, D:5 or E:1 of Supplement No. 1 to Part 740 of the Export Administration Regulations (EAR)

① "600 series": ECCNs in the "xy6zz" format on the Commerce Control List (CCL) that control items on the CCL that were previously controlled on the U.S. Munitions List or that are covered by the Wassenaar Arrangement Munitions List (WAML). The "6" indicates the entry is a munitions entry on the CCL. The "x" represents the CCL category and "y" the CCL product group. The "600 series" constitutes the munitions ECCNs within the larger CCL.

① 9x515: one of the following ECCNs on the Commerce Control List (CCL): 9A515, 9B515, 9C515, 9D515 or 9E515, which are spacecraft and related items that the President has determined no longer warrant control under United States Munitions List (USML) Category XV—spacecraft and related items.

① Non-U.S.-made item is subject to the EAR, and may require a license prior to export from abroad or reexport, see EAR to determine license requirements of the non-U.S.-made item.

① Thank you for using the BIS Interactive Tool Please feel free to contact us if you have any further questions



Scenario #2 – 600 series Direct product and *De minimis* “600 Series” & Non “600 series”

- U.S. Company sells technology (ECCN 9E610.a) for the production of an EOS (ECCN 9A610) to the Israeli Ministry of Defense and exports it using a BIS license
- Israeli MoD produces the EOS (*Fair Market Value \$300*) in Israel using all Israeli parts, except for a U.S. high/low pressure valve specially designed for the system (9a610.x, FMV \$60) AND a mask hose (ECCN 1A004.a) (FMV \$50).
- Israeli MoD makes a sale of their system to India MoD.
- Is the Israeli aircraft on-board oxygen generating system being sold to India subject to the Export Administration Regulations (EAR)?



Decision Tool Analysis – Scenario #2

- **Question 1:** Is the non-U.S.-made item produced from U.S. "600 series" or 9x515 technology or software, OR from a non-U.S.-made manufacturing plant or major plant component (made from U.S. 600 series or 9x515 technology)?

Answer 1: Yes

The Israeli military aircraft emergency oxygen system (EOS) was produced from the U.S. exported technology (**ECCN 9E610.a**) for the production of an EOS (which, if made in the US, would be classified under ECCN 9A610.a).



Decision Tool Analysis – Scenario #2

- **Question 2:** Are either of the following true (if it were classified using the U.S. Export Administration Regulations, Commerce Control List)?
 - The non-U.S-made direct product is classified under a “600 series” ECCN and is destined to a country listed in Country Group D:1, D:3, D:4, D:5, E:1 or E:2.
 - OR
 - The non-U.S-made direct product is classified under a 9x515 ECCN and is destined to a country listed in Country Group D:5, E:1 or E:2.

Answer 2: No, India is not in Country Group D or E



Decision Tool Analysis – Scenario #2

- **Question 3:** Does the non-U.S.-made item contain U.S.-origin see-through carve-out, "600 series" or 9x515 items?

Answer 3: Yes, the EOS incorporates a U.S.-origin high/low pressure valve (FMV \$60), which was specially designed for the system, thus making it ECCN **9A610.x**.

ECCN 9A610.x includes parts, components, accessories, and attachments that are specially designed for a commodity subject to control in this ECCN (9A610) or a defense article in USML Category VIII and not elsewhere specified on the USML or in ECCN 9A610.y.



Decision Tool Analysis – Scenario #2

- **Question 4:** Are all the U.S.-origin items y items of a "600 series" ECCN?

Answer 4: No, the U.S. valve is 9A610.x.

- **Question 5:** Is the non-U.S.-made item destined to a country listed in Country Group D:5, E:1 or E:2?

Answer 5: No, the *military aircraft emergency oxygen system (EOS)* is destined to the India MoD. India is not listed in Country Groups D or E.



Decision Tool Analysis – Scenario #2

- **Question 6:** Does the non-U.S.-made item contain non-“600 series”/non-9x515/non-see-through carve-out U.S.-origin items?

Answer 6: Yes, It contains a U.S.-origin mask hose (FMV \$50 each). The U.S. controlled content is classified under ECCN 1A004.a.

- **Question 7:** Are any of the U.S.-origin non-“600 series”/non-9x515/non-see-through carve-out U.S.-origin items ineligible for *de minimis* treatment? (see 734.4(a) of the EAR)

Answer 7: No, The U.S.-origin mask hose under ECCN 1A004.a is not ineligible for de minimis treatment.



Decision Tool Analysis – Scenario #2

- **Question 8:** Would any of the non-“600 series”/non-9x515/non-see-through carve-out U.S.-origin items require authorization from BIS if exported from the U.S. to the destination country of the non-U.S.-made item?

Answer 8: Yes, the U.S. mask hose is controlled under ECCN 1A004.a, for NS:2, which would require a license to India.

- **Question 9:** Are all of the non-“600 series”/non 9x515/non-see-through carve-out U.S.-origin items eligible for License Exception GBS, if reexported in the form received to the destination country of the non-U.S.-made item?

Answer 9: No, the U.S. mask hose is controlled under ECCN 1A004.a, which is not eligible for License Exception GBS.



Decision Tool Analysis – Scenario #2

- **Question 10:** Is the percentage of the \$ value of the U.S.-origin controlled content greater than 25%?

NOTE: The controlled content in this scenario includes the 600 series/9x515/see-through carve-out U.S. origin as well as the non-“600 series”/non 9x515/non-see-through carve-out U.S.-origin items NOT eligible for License Exception GBS



Decision Tool Analysis – Scenario #2

Answer 10:

The U.S. valve is classified under ECCN 9A610.x, controlled for NS:1 and RS:1, which would require a license to India if exported from the United States, therefore it is “controlled content.”

The U.S. mask hose is classified under 1A004.a, controlled for NS:2, which would require a license to India, therefore it is “controlled content”



$$\frac{\$60(\text{valve}) + \$50(\text{hose})}{\$300} = \frac{\$110}{\$300} = .36 \times 100 = 36\%$$

36% is greater than 25% so the answer to Question 10 is **Yes**



Decision Tool Conclusion – Scenario #2

- **Conclusion:** Non-U.S.-made item is subject to the EAR and may require a license prior to export from abroad or reexport, see EAR to determine license requirements of the non-U.S.-made item.
- **Click “Next”** - Thank you for using the BIS Interactive Tool. Please feel free to contact us if you have any further questions.
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Scenario #3 – Direct product Non-“600 series” technology & *De Minimis* non-600 series items

- The U.S. company exports the following to a French company under BIS licenses:
 - **Technology** exported under ECCN 1E001 for the production of a **superconductive composite conductor** (which would be classified under ECCN 1C005)
 - **Ball bearings** (classified under 2A001.a, not controlled for MT)
 - **Electronic cooling fluid** (flouorocarbon electronic cooling fluid classified under 1C006.d)



Scenario #3 – Direct product Non-“600 series” technology & *De Minimis* non-600 series items

- The **French company** uses the U.S. technology (ECCN 1E001) for the production of a superconductive composite conductor (ECCN 1C005)
- The French company produces an **electronic test stand (FMV \$1000)** incorporating:
 - French made **superconductive composite conductor**;
 - **U.S.-origin ball bearings** (total FMV of \$60); and
 - **U.S.-origin cooling fluid** (FMV \$150).



Scenario #3 – Direct product Non-“600 series” technology & *De Minimis* non-600 series items

- The French company makes a sale of the electronic test stand to a company in Brazil.
- Is the French-made electronic test stand subject to the EAR?



Decision Tool Analysis – Scenario #3

- **Question 1:** Is the non-U.S.-made item produced from U.S. “600 series” or 9x515 technology or software OR from a non-U.S.-made manufacturing plant or major plant component (made from U.S. “600 series” or 9x515 technology)?

Answer 1: No, while the U.S. company did export technology to the French company, it was not a “600 series” technology. In addition, the non-U.S. made item that is being exported to Brazil is the electronic test stand and not a direct product of any U.S. technology that is being exported to the French company.



Decision Tool Analysis – Scenario #3

- **Question 2:** Does the non-U.S.-made item contain U.S.-origin see-through carve-out, "600 series" or 9x515 items?

Answer 2: No, the items are not 600-series, 9x515 or see-through carve-out items.



Decision Tool Analysis – Scenario #3

- **Question 3:** Is the non-U.S.-made item produced from non-“600 series”/non-9x515 U.S. technology or software OR from a non-U.S.-made manufacturing plant or major plant component made from non-“600-series” or non-9x515 U.S. technology?

Answer 3: No, although the technology to produce a superconductive composite conductor was exported to the French company and is used in the production of a part that goes into the electronic test stand, the technology used to produce the test stand (being exported to Brazil) is French.



Decision Tool Analysis – Scenario #3

- **Question 4:** Does the non-U.S.-made item contain non-“600 series”/non-9x515/non-see-through carve-out U.S.-origin items?

Answer 4: Yes, the U.S. company is exporting **ball bearings** (ECCN 2A001.a) and **fluorocarbon electronic cooling fluid** (ECCN 1C006.d) to France for incorporation into the French-made electronic test stand.

- Even though the **superconductive composite conductor**, is based on U.S. technology and may be subject to the EAR, it is **not U.S.-origin**. Only parts that are both U.S.-origin and controlled to the destination of the non-U.S.-made item must be counted in a *de minimis* calculation.



Decision Tool Analysis – Scenario #3

- **Question 5:** Are any of the U.S.-origin items ineligible for de minimis treatment? [see 734.4(a) of the EAR]?

Answer 5: No, the U.S.-origin items are not ineligible for *de minimis*.

- **Question 6:** Would any of the U.S.-origin items require authorization from BIS if exported from the U.S. to the destination country of the non-U.S.-made item?

Answer 6: Yes, the U.S.-origin items fall under ECCNs 2A001.a and 1C006.d. These items have a license requirement under NS:2 when being exported to Brazil, thus making them controlled content.



Decision Tool Analysis – Scenario #3

- **Question 7:** Are all U.S.-origin items eligible for License Exception GBS, if reexported in the form received to the destination country of the non-U.S.-made item?

Answer 7: Yes, the electronic cooling fluid and the ball bearings are eligible for License Exception GBS (which is determined by looking at the List Based License Exceptions for the two ECCNs 1A006.d and 2A001.a) ...



Decision Tool Conclusion – Scenario #3

- **Conclusion:** Non-U.S.-made item is NOT subject to the EAR.
- **Click “Next”** - Thank you for using the BIS Interactive Tool. Please feel free to contact us if you have any further questions.
- **Click “Summary”** – it gives you a summary of all the questions, your response and the conclusion of your session. In the upper right corner of the page, you have the option to print this page or reset to go the beginning.

